

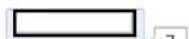
# EXHIBIT 5

# Litigation finance firm in Chevron case says it was duped by Patton Boggs

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While settling a dispute with Chevron, Burford Capital says it would never have financed Patton Boggs' case against the oil giant if it weren't for materially "false and misleading" statements by a Patton partner with whom it had a "special relationship."

By Roger Parloff

FORTUNE -- In the latest in a series of bombshell filings, Chevron today submitted a 26-page sworn declaration from the CEO of Burford Capital, a \$300 million, publicly traded fund that in late 2010 agreed to finance Patton Boggs's representation of the plaintiffs bringing an environmental suit against Chevron in Lago Agrio, Ecuador.



COURTESY: CHEVRON

In it Burford CEO Christopher Bogart says his firm would never have invested in the case were it not for "false and misleading representations" made not only by Steve Donziger, the Lago Agrio team's longtime New York lawyer, but also by Patton Boggs, a prominent Washington-based, AmLaw 100 law firm that agreed to take on the plaintiffs' troubled environmental suit in February 2010 on a partial contingency basis. ([Read the full declaration here.](#))

Burford relied, Bogart says, on a misleading analysis of the case made by Patton Boggs partner James Tyrrell, Jr., with whom, Bogart says, Burford had a "'special' and multifaceted relationship" at the time. Most of the misrepresentations Bogart alleges concern the extent to which Patton Boggs already knew that a crucial damages assessment drafted by a purportedly "neutral and independent" court-appointed expert in the case had, in reality, been secretly ghost-written by the Lago Agrio plaintiffs lawyers themselves.

Emails seeking comment from Tyrrell and other Patton Boggs attorneys were not immediately returned. Nor were emails to Donziger's counsel, John Keker (who is in a court proceeding this morning) or the Lago Agrio plaintiff team's spokesperson, Bill Hamilton of Fenton Communications.

Because an Ecuadorian provincial court issued an \$18.2 billion judgment against Chevron in February 2011—later bumped up to \$19 billion—Patton Boggs theoretically stands to collect

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hundreds of millions of dollars if the judgment can ever be enforced. The plaintiffs team is currently attempting to enforce it foreign courts, including those of Canada and Argentina.

Chevron is currently considering whether to bring fraud charges against Patton Boggs, the company stated in a Manhattan federal court filing Friday, and will make up its mind by May 10.

On October 31, 2010, Burford gave the plaintiffs \$4 million in financing as the first tranche in what was planned to become a \$15 million investment in the case. In exchange it received a 1.5% stake of any recovery, which was to rise to a 5.5% stake upon full funding.

But on February 1, 2011, Chevron (**CVX**) filed a civil RICO (Racketeer Influenced and Corrupt Organizations Act) suit in Manhattan federal court against Donziger, the Amazon Defense Fund, and others key figures involved in the Lago Agrio case, alleging wire fraud, extortion, money laundering, and obstruction of justice. U.S. District Judge Lewis Kaplan issued a preliminary injunction in March in a 131-page, 434-footnote ruling that detailed the disturbing state of the evidence against Donziger and his Ecuadorian colleagues on the case at the time. (The injunction was later vacated on appeal jurisdictional grounds unrelated to Kaplan's factual findings.)

Burford never made any follow-up investments.

Although Burford quickly resold most of its stake in the case in December 2010, it retained until today an upside interest in the outcome of the lawsuit. With today's settlement, however, Burford turns that remaining stake over to Chevron. In this morning's joint press release, Bogart says, "Burford stands by its clients in the face of aggressive litigation tactics by their opponents, but Burford does not sit still for being deceived or defrauded and has no interest in profiting from such conduct."

Chevron's general counsel, Hewitt Pate, in turn praised Burford in the joint statement for having "acted responsibly after becoming aware of the fraud, bribery, and extortion perpetrated here."

In Bogart's affidavit he argues that Burford was especially inclined to credit Tyrrell's assessments of the case because of Tyrrell's "special relationship" with the firm. To begin with, he writes, Tyrrell was, as a former partner at Latham & Watkins, close friends of four former Latham partners who then occupied senior positions at Burford.

"Tyrrell was also an advocate and enthusiast of litigation funding," Bogart continues, extending "support to start-up funders." For instance, Patton Boggs was providing Burford with rent-free office space at its New York office, which Tyrrell heads, at the time the Lago Agrio investment was negotiated, Bogart writes.

Last month Judge Kaplan ordered Patton Boggs to make voluminous productions of documents, finding that any attorney client privilege that might apply would be pierced due to the "crime fraud exception," which applies when there is evidence that documents were made in furtherance of a crime or fraud. Though Judge Kaplan made no finding as to whether Patton Boggs itself had any actual knowledge of any crime or fraud, his 73-page ruling was tart in its rejection of the firm's portrayal of itself as an unrelated outsider who, if it complied with the subpoena, would be forced to incur excessive and burdensome costs.

He wrote: "Here, [Patton Boggs] was well aware of Chevron's fraud allegations when it joined the [Lago Agrio plaintiffs] team — indeed it was brought on to combat them — and understood Chevron's intention to fight this matter vigorously. Any failure to have anticipated that its involvement could lead to discovery obligations and expenditures on its own behalf, if there was such a failure, would have reflected an uncommon lack of foresight."

Burford's investment in the controversial case—which, like most such investments, remained secret until disclosed through ancillary U.S. litigation brought by Chevron—was the subject of a May 2011 *Fortune* feature story which had been highly critical of the investment firm. (See [Have you got a piece of this lawsuit?](#))

While at least four federal court judges had already found "prima facie" evidence of fraud by the plaintiffs team at the time Burford invested, the quality and quantity of that evidence has strengthened geometrically since the filing of Chevron's RICO case. Last July U.S. District Judge Lewis Kaplan in Manhattan ruled that "uncontradicted evidence" showed that the case had been "unquestionably ... tainted" by this fraud. (See [Chevron claims Patton Boggs tried to cover up](#)

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In addition, Chevron has now also presented in its RICO case substantial evidence indicating that the entire 188-page, \$18.2 billion judgment ruling was ghostwritten by the Ecuadorian plaintiffs lawyers themselves—an opportunity that was allegedly accorded to them after they agreed to pay two Ecuadorian judges \$500,000 from the anticipated recovery. Chevron has shown, for instance, that at least one third of the judgment was plagiarized from internal plaintiffs memoranda that were never made part of the record in the case, and it has submitted an extensively corroborated affidavit from one of the two Ecuadorian judges in question.

(In reply, the Lago Agrio plaintiffs team submitted an unnotarized declaration from the other former judge, the titular author of the ruling, Nicolas Zambrano. In it Zambrano says he wrote the ruling himself and denies having accepted any bribe offer. But the Lago Agrio plaintiffs team has also indicated that Zambrano will probably refuse to submit to a deposition backing up his claim, rendering his declaration's legal value dubious. Further, in his declaration Zambrano makes no attempt to explain away the voluminous corroborating evidence of ghostwriting that Chevron has submitted.

Similarly, in a terse, carefully worded affidavit the Lago Agrio plaintiffs' chief U.S. lawyer Donziger has denied personal involvement in or knowledge of bribery or ghostwriting of the judgment, but has not denied that bribery and ghostwriting may have occurred. The other Amazon Defense Front defendants have defaulted by failing to appear in the RICO suit.)

Finally, just last week, the plaintiffs team's environmental experts, Stratus Consulting of Boulder, Colorado, recanted all its scientific findings and conclusions in the case in exchange for being dropped as a defendant in the RICO suit. Its officials expressed regret for having "allowed the firm to be used the way it was." (The Lago Agrio plaintiffs say Chevron "bullied" Stratus into the recantation by threatening it with "financial extinction.")

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